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10/089,354	07/26/2002	Eric Tcheou	CM1858Z	1366

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EXAMINER

DOUYON, LORNA M

ART UNIT PAPER NUMBER

1751

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,354

Applicant(s)

TCHEOU ET AL.

Examiner

Lorna M. Douyon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/28/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

1. Claims 7, 14-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7, 14, 16-19 are indefinite because the court has held that compositions are indefinite for being defined in terms of properties alone. *Ex parte Spacht*, 165 USPQ 409 (PO BdPatApp 1969); *Ex parte Slob*, 157 USPQ 172 (PO BdPatApp 1967); *Ex parte Pulvari*, 157 USPQ (PO BdPat.App 1966).

Claim 15 is indefinite in the recital of “tablet” in line 1 (first occurrence) because it is not consistent with claim 10 which is a “method” claim.

Claim 16 is indefinite because “the hydrotrope” in line 2 lacks antecedent basis with respect to claim 7.

In claim 17, lines 1-2, the “tensile strength of more than 5 kPa” is not consistent with the tensile strength of at least 15 kPa of claim 7, to which this claim is dependent upon.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 2, 4, 6, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hampson (GB 1,077,067).

Hampson teaches a tablet comprising 21.3 wt% sodium alkyl benzene sulphonate and 2.83 wt% sodium toluene sulphonate having a fracture strength, as made, of 6.4 kg (see Example D, page 2, line 74 to page 3, line 15). Hampson teaches the limitations of the instant claims. Hence, Hampson anticipates the claims.

4. Claims 1, 2, 6, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by JP7286199, hereinafter "JP '199".

JP '199 teaches a tablet detergent composition comprising at least 15% by weight anionic and nonionic surfactants and 10% by weight sodium toluene sulfonate (see Sample Nos. 11 and 13). JP '199 teaches the limitations of the instant claims. Hence, JP '199 anticipates the claims.

5. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Binstock et al. (US Patent No. 5,958,855), hereinafter "Binstock".

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Binstock teaches a tablet by compressing a composition comprising low foaming nonionic surfactant and sodium xylene sulfonate (see Example 1 under col. 7). Binstock teaches the limitations of the instant claim. Hence, Binstock anticipates the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 4, 5, 10, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '199 as applied to the above claims.

JP '199 teaches the features as described above. JP '199, however, fails to specifically disclose (1) the compression pressure of the tablet and (2) the tensile strength and density of the tablet.

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With respect to difference (1), it should be noted that the present claim is a product-by-process claim, hence, any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324.

With respect to difference (2), it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the tensile strength and density of the tablet of JP '199 to be within those recited because same tablets having the same ingredients with overlapping proportions have been utilized.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hampson or JP '199 as applied to the above claims, and further in view of Couderc et al. (US Patent No. 4,294,717), hereinafter "Couderc".

Hampson or JP '199 teaches the features as described above. Hampson or JP '199, however, fails to disclose sodium di isoalkylbenzene sulphonate.

Couderc teaches the equivalency of sodium toluene or xylene sulfonate with diisopropylbenzene sulfonate in a detergent composition (see col. 1, line 66 to col. 2, line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the sodium toluene or xylene sulfonate of Hampson or JP '199 with

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diisopropylbenzene sulfonate because the substitution of art recognized equivalents as shown by Couderc is within the level of ordinary skill in the art.

10. Claims 7, 14, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salager et al. (EP 0,846,756), hereinafter "Salager".

Salager teaches a tablet comprising a core and a coating, the core being formed by compressing a particulate material comprising anionic agglomerates, nonionic agglomerates and effervescency compact to give tablets a tensile strength of 8.5 kPa, and after coating with adipic acid, the tablets had a tensile strength of 22.2 kPa (see Example 2 on page 11). Salager also teaches that the tablet completely disintegrates and disperses in alkaline or surfactant-rich was liquor (see page 2, lines 33-34). Salager, however, fails to specifically disclose the tablet giving less than 40% by weight residue in the dispenser as required in the recited test.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the tablet of Salager to exhibit a residue of less than 40% by weight when subjected to the same test because same tablets having overlapping tensile strength have been utilized.

11. Claims 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salager as applied to claims 7, 14, 17 and 19 above, and further in view of JP'199.

Salager teaches the features as described above. In addition, Salager teaches the addition of effervescent to the detergent tablet to improve the disintegration of the tablet (see page 5, lines 7-8).

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JP '199 teaches a detergent tablet having sufficient tablet strength and dissolving rapidly in water and comprises granular dissolution promoters, wherein the dissolution promoters include effervescent materials like potassium carbonate and citric acid, and also teaches the equivalency of these effervescent materials with sodium toluene sulphonate or sodium xylene sulphonate (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the effervescent of Salger with sodium toluene sulphonate or sodium xylene sulphonate because the substitution of art recognized equivalents as shown by JP '199 is within the level of ordinary skill in the art.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable Hampson or JP '199 as applied to the above claims, and further in view of Salager.

Hampson or JP '199 teaches the features as described above. Hampson or JP '199, however, fails to disclose coating the tablet.

It is generally known to coat detergent tablets. An example is Salager, who teaches coating a detergent tablet so that the tablet does not absorb moisture and is prevented from mechanical shock during handling and shipping (see page 3, lines 33-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the tablet of Hampson or JP '199 because such coating would protect the tablet from absorbing moisture and prevent it from mechanical shock as taught by Salager.

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13. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hampson.

Hampson teaches the features as described above. In addition, Hampson also teaches that the tablets are commonly made by compressing particles in a tableting machine into a generally cylindrical tablet of 30 to 75 mm and weighing 25 to 65 gm (see col. 1, lines 14-19). Hampson, however, fails to specifically disclose a tablet having a weight of 50 g, a diameter of 55 mm and having 3% hydrotrope.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the weight of the tablet and its diameter through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I. With respect to the hydrotrope, a *prima facie* case of obviousness exists where the claimed ranges (3%) and prior art ranges (2.83%) do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium MetalsCorp. of America v. Banner*, 778F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05I.

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-6, 9-13 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 6-7 and 11 of U.S. Patent No. 6,559,115. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar tablets having overlapping proportions of the ingredients.

16. Claims 1-3, 6, 11 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5, 6, 9, 11, 14, 15, 17 and 19 of U.S. Patent No. 6,686,329. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar tablets having overlapping proportions of the ingredients.

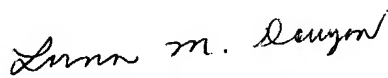
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17. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. These references are considered cumulative to or less material than those discussed above.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lorna M. Douyon
Primary Examiner
Art Unit 1751